

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated January 29, 2007. Reconsideration and allowance of the application in view of the remarks to follow are respectfully requested.

Claims 1-20 are pending in the Application. Claims 1, 7 and 15 are independent claims.

In the Final Office Action, Claims 1-4, 6-11 and 13-16 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Japanese Patent Publication No. JP 06-118914 to Katsutoshi ("Katsutoshi"). Claims 5 and 12 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Katsutoshi in view of U.S. Patent No. 6,020,886 to Jacober ("Jacoher"). It is respectfully submitted that claims 1-20 are patentable for at least the following reasons.

In review of the Final Office Action, it appears that the Final Office Action is directly derived from the Office Action previously forwarded on October 11, 2006. In fact, the present Office Action does not even attempt to address previously added claims 17-20, as these claims were not present at the time of the October 11, 2006 Office Action. Accordingly, it is respectfully

submitted that the Applicant is deprived of addressing any remarks directed to these claims since no such remarks are provided. Accordingly, it is respectfully requested that either the Application be allowed as presented or at least, that a fresh Office Action be issued addressing the new claims presented and the arguments provided in the Amendment previously submitted on January 5, 2007.

The present Office Action takes the position that "data per se on a disk does not carry any patentable weight since any data can be recorded on a medium." (See, Office Action, page 2, lines 6-10.) While it may be true that "any data may be recorded on a medium", this in and of itself does not result in no patentable weight being assigned to a data structure. MPEP §2106.01, makes clear that (emphasis added) "[d]escriptive material can be characterized as either 'functional descriptive material' or 'nonfunctional descriptive material.' In this context, 'functional descriptive material' consists of data structures and computer programs which impart functionality when employed as a computer component ... When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in

most cases since use of technology permits the function of the descriptive material to be realized." It is respectfully submitted that claims 1-6 and 15-20 as provided consists of data structures which impart functionality and as such, the claim elements should be apportioned patentable weight. Further, it is respectfully submitted that claims 7-13 are drawn to a playback device comprising "supply means for supplying demonstration data for the demonstration including emulation of data from an external data network regardless of whether the external data network is currently available" which should also be reconsidered and attributed patentable weight in such reconsideration. Accordingly, it is respectfully requested that the claim limitations be reviewed and apportioned appropriate patentable weight.

The Office Action takes the position that "data" as for example required by claim 1, may be "read on just data having the inherent demo data of the device." (See, Office Action, page 2, lines 6-7.) This position is respectfully refuted. The claims, such as claim 1, requires "the data carrier is configured to simulate access to the external data network regardless of whether the external data network is currently available ..." Accordingly, it is respectfully requested that reconsideration and reversal of

the position be provided. Further, it is respectfully requested that the Examiner specifically point out wherein Katsutoshi, the limitations of the claims are provided. As stated in the Amendment forwarded on January 5, 2007, there is no showing or suggestion within the four corners of Katsutoshi of an inherent function including use of an external data network as required by the present claims. Additionally, there is no showing or suggestion of a data carrier configured to simulate access to the external data network regardless of whether the external data network is currently available as required by claim 1 and as similarly required by each of the currently pending claims.

On page 4 of the present Office Action, it is stated that "[t] claims are drawn to a data carrier having control data such as demo information with an 'inherent function'. Therefore, whether the limitation 'external data network' is present or not, it is acknowledged by the applicant as being an inherent limitation within the data carrier demo data." This position is respectfully refuted. The claims, such as claim 1, require that the "inherent function" is an inherent function of a playback device, "wherein the inherent function [of the playback device] includes use of an external data network ..." Accordingly, the claims do not require

or stipulate an inherent limitation within the data carrier demo data.

It is respectfully submitted that claim 1, for example, requires "wherein the data carrier is configured to simulate access to the external network" is nowhere addressed in the Office Action. Nor are similar elements of claims 3, 7 and 15 addressed in the Office Action.

It is respectfully submitted that since Katsutoshi fails to disclose the claim limitations as presented, Applicant respectfully submits that the Office Action fails to make a prima facie case of anticipation since the claims of the present application require elements that are neither disclosed nor suggested expressly or inherently by Katsutoshi. Appellant respectfully notes that a missing element is inherently present in a reference only if that element necessarily follows from what has been expressly described, and would be so recognized by one of skill in the art. Mere possibilities or even probabilities are not enough; necessity recognized by those of skill in the art is required.

In stark contrast to Katsutoshi, claim 1 of the present system requires, and claims 7 and 15 also similarly require, amongst other patentable elements, (illustrative emphasis provided), "[a] data

carrier comprising demonstration control data configured to control a demonstration of an inherent function of a playback device wherein the inherent function includes use of an external data network wherein the data carrier is configured to simulate access to the external network regardless of whether the external data network is currently available." Jacober is cited for other reasons which do not cure the defects in Katsutoshi.

Based on the foregoing, the Applicant respectfully submits that independent Claims 1, 7 and 15 are patentable over Katsutoshi and notice to this effect is earnestly solicited. Claims 2-6, 8-14 and 16-20 each depend from one of Claims 1, 7 and 15 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of said claims.

It is further respectfully submitted that, Katsutoshi, Jacober, and any combination thereof do not disclose or suggest a data carrier "further configured to simulate access to the external data network by simulating a connecting process over a network interface to the external data network" as required by claims 17 and 19; nor a data carrier "further configured to simulate a

waiting time for access to network services" as required by claims 18 and 20.

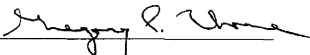
These elements are nowhere addressed in the final Office Action which renders the final Office Action defective or provides that these claims are in an allowable form. Accordingly, an indication regarding each of the dependent claims is respectfully requested.

It is respectfully requested that at least separate consideration of each of the dependent claims be provided.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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